IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 27069 of 2007(V)

AGAINST THE ORDER IN IA.2445/07 IN
OS.298/2007 of MUNSIFF COURT,MUVATTUPUZHA
.....

PETITIONER:

LIS SEBASTIAN, W/O VICTOR,
D/O LATE SEBASTIAN, AGED 36 YEARS,
VETTUKATTIL VEEDU, NAZRETH HILL P.O.,
KURAVILANGADU.

BY ADV. SMT.H.SUBHALEKSHMI
SRI.R.RAJAGOPAL

RESPONDENT:

MERCY PAUL, W/O PAUL,
AGED 64 YEARS, CHATHANKANDOM VEEDU,
RAMAMANGALAM.

BY ADV. SRI.JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.27069/2007 V

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.298 OF 2007 IN THE FILES OF THE HON'BLE MUNSIFF COURT, MUVATTUPUZHA.**

EXT.P2: **COPY OF THE I.A.NO.2445 OF 2007 DTD. 18/08/2007 IN O.S.NO.298 OF 2007 IN THE FILES OF THE MUNSIFF'S COURT, MUVATTUPUZHA.**

EXT.P3: **CERTIFIED CARBON COPY OF THE ORDER DTD. 21/08/2007 PASSED BY THE HON'BLE MUNSIFF'S COURT IN I.A.NO.2445 OF 2007 IN O.S.NO.298 OF 2007 IN THE FILES OF THE HON'BLE MUNSIFF'S COURT, MUVATTUPUZHA.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No. 27069 OF 2007

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Dated this the 13th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff's Court, Muvattupuzha in I.A.No.2445 of 2007 in O.S.No.298 of 2007. It was an application filed by the defendant in the suit contending that the civil court has no jurisdiction to decide the issue as it comes absolutely within the province of the Family Court under Section 7 of the Family Courts Act. The brief facts necessary for the disposal of the case are as follows:

2. The mother-in-law of the petitioner has instituted a suit for injunction against her praying for injunction to restrain her from interfering with the peaceful possession of the property by her. It is her contention that she had purchased the property by virtue of a document in the year 1978 and it belongs to her exclusively. There is no dispute that the defendant in the suit is the wife of the second son of the plaintiff in the suit. It appears that the relationship is not cordial and accusations are made by the plaintiff to the effect that the daughter-in-law is attempting to interfere with the peaceful possession of the property. The court below on the

question of jurisdiction held that the mere fact that the plaintiff is the mother-in-law will not make the suit a matter falling under Explanation (d) to Section 7 of the Family Courts Act. Learned counsel had invited my attention to Section 7(d) of the said Act, which reads as follows: "A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship" comes within the ambit of jurisdiction conferred on the Family court. Therefore, it is contended that the dispute which is raised by the mother-in-law comes within the ambit of that clause and therefore by virtue of Section 8 of the Family Court Act, the Family Court alone has jurisdiction to try the case. Learned counsel had also relied on the decisions of this Court reported in ***Leby Issac v. Leena M.Ninan(2005(3) KLT 665) and in Suprabha v. Sivaraman(2006(1) KLT 712).*** As far as ***Leby Issac's case*** is concerned, the question posed for consideration was does a Family Court have jurisdiction to entertain a suit filed by a husband for recovery of money as compensation and damages from his wife and father-in-law? The court construed Section 7(1)(d) of the Family Courts Act and also the phraseology "in circumstances arising out of marital relationship". This Court held that the Family Court has jurisdiction to entertain the proceedings. In the decision reported in 2006(1) KLT 712, a Division Bench of this Court held that as far as Section 7(d) is concerned, a petition for

return of gold ornaments and other cash paid at the time of marriage will also come within the jurisdiction of the Family Courts though one of the spouses is not alive at the time the case was filed. So, in both the cases referred to above, there was a direct nexus between the cause of action and the couple involved. In this case before me the question is whether in a suit filed by the mother-in-law for injunction with respect to her own property against the defendant who happens to be her daughter-in-law and whether the wordings under Section 7(d) of the Act "in circumstances arising out of a marital relationship" will raise or not? Though it has to be held that the decision reported in ***S.R.Batra and another v. Taruna Batra(2007)2 SCC (Crl.) 56)*** may not have direct bearing on the question of jurisdiction, the Apex Court considered the question whether in India a daughter-in-law is entitled to have an order of injunction against the mother-in-law in a property which belongs exclusively to the mother-in-law. The Apex Court held that like the British Matrimonial Homes Act, 1967 which protects such a right, there is no such law in India. So, the simple point that this court has to answer is whether "in circumstances arising out of a marital relationship" will arise in this case with respect to the subject matter of the suit. The subject matter of the suit is on the basis of an exclusive title and possession and it is filed against the daughter-in-law. A daughter-in-law

does not have a legal right as held by the Supreme Court to be in possession of the property of the mother-in-law. So just because one happens to be the daughter-in-law it does not mean that when a dispute arises between the mother-in-law and daughter-in-law with respect to the personal property of the mother-in-law it will come within the ambit "in circumstances arising out of a marital relationship". I may also refer to paragraph 7 of the judgment reported in 2006(1) KLT 712 where this court referred to the decision of the Apex Court reported in 2003(2) KLT 403(SC). The Supreme Court held that disputes relating to marriage and family affairs and for matters connected therewith must be given a broad construction and the statement of objects, etc. etc. So, what is to be emphasised is whether just because one happens to be the daughter-in-law any dispute that arises will come within the ambit of a dispute which arises on account of a matrimonial relationship. I feel such a broad analogy cannot be given.

3. The Karnataka High Court in the decision reported in ***Srihari v. Sukunda(2001(1)KLT SN 101 at page 82***) held that the dispute between family members concerning property, the Family Court has no jurisdiction. If one of the spouses is absent in the litigation, it can never be considered as a cause falling within the realm of Family Court.

4. On analysis of the entire materials available, I am of the view that

the nature of dispute now pending between the plaintiff and the defendant in the suit does not come within the ambit of "arising out of a marital relationship. When it is so, Section 7 of the Family Courts Act does not confer jurisdiction and therefore Section 8 will not oust the jurisdiction of the civil court as well.

From these discussions, I hold that the court below had approached the matter in the right perspective and rendered a decision. The writ petition is therefore devoid of merit and hence it is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-